UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,492	03/09/2001	Stephen Belth	12166-0002	7458

7590 09/23/2005

Intellectual Property Group
Bose McKinney & Evans LLP
Suite 2700
135 North Pennsylvania Street
Indianapolis, IN 46204

EXAMINER	
LE, KHANH H	

ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/802,492	BELTH, STEPHEN	
	Examiner	Art Unit	
	Khanh H. Le	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 June 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This office Action is responsive to the Correspondence dated June 23, 2005. Claims 1-38 are pending. Claims 1, 12, 21, 27, 32, and 36 are independent.

Response to Arguments

2. The previous art rejections are withdrawn thus the arguments are moot.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4, 10, 11, 15, 20, 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4, 10, 15, 20, and 31 recite a result of the audio component excluding something without the structure necessary to do so. Appropriate correction is required.

To be consistent with the interpretation of the rest of the claims , it is interpreted that the audio component is not a structure but an audio signal. As claimed, the claims present substantial guesswork in determining the scope of the claim or substantial confusion as to the interpretation of the claims because the necessary structure or element necessary to "exclude" is not recited. In Re Steele, 134 USPQ 292, held that an art rejection should not be applied in those situations because such rejection would be based on unsupported speculative assumptions .Thus no prior art is applied to claims 4, 10, 15, 20, 31 in the instant case. .

Claim 11: Is the " first tailored portion" in "wherein the visual component includes a first tailored portion" the same as the "a tailored portion" in claim 7? Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fedorovsky et al, US 2002/0099798 in view of admitted art and other well-known facts.

As to claims 1-2, 5, 21-22, and 32-33, Fedorovsky discloses
a file transfer method is disclosed in which in which a client (100) requests a file from a server (110) and the server (110) sends to the client (100) one or more data segments which data segments together constitute content of the requested file (in particular audio files) and additional content provided by a service provider to the download content (such as targeted advertising material based on the user's data, e.g. preferences). To reduce storage requirements, the server may store a virtual file reference for each user and construct a customized file dynamically (see at least abstract, [005] to [0024]).

Thus Fedorovsky, in order to provide audio targeted messages included in the downloads requested by the user, at least implicitly discloses:

A marketing system for communicating with a targeted individual, the marketing system, comprising:
a processor;
a database accessible by the processor including data related to the targeted individual and an identifier;
a resource including an input (at least a logon page for the user to input the request) (see at least Figs. 1-2 and associated text); and
the processor adapted to present the targeted individual with a media (the downloaded file) , the media including an audio component,
the audio component targeted to the individual wherein the media is presented in response to the identifier being provided to the input of the resource. (see at least Figs 1-4 and associated text).

FEDOROVSKY does not specifically disclose the marketing audio component has a generic marketing portion and a "tailored portion configured based on the data related to the targeted individual".

However it is admitted that marketing form letters where the customer's name gets inserted into a generic form paragraph is known. Computerized calls to consumers made from text converted to speech of such personalized messages are admittedly known as well (see Specifications page 2).

Thus, it would have been obvious to one skilled in the art at the time the invention was made to add such admittedly known method of using audio personalized messages to FEDOROVSKY 's advertising method, to provide a warmer, more personalized message. It would also have been obvious to select the tailored audio portion based on the identifier being a

name in a database, so to effect proper tailoring of that portion to the targeted individual.

Thus "the first targeted portion including an audio recording of the name of the targeted individual" is disclosed in view of FEDOROVSKY and the above admitted art.

Further, as to claims 3, 14, 23, 34-35,
FEDOROVSKY discloses the audio message includes a (second) tailored portion based on a first value of a first characteristic of the targeted individual, for example her demographics or preferences (see FEDOROVSKY [0061]) It is further implicit in FEDOROVSKY that the second tailored portion is a second audio recording selected from the plurality of audio recordings.

As to claims 6, 12, and 16 which, in addition to the limitations common to the independent claims addressed above, further claim "the first media including the address of the resource and at least a first portion of the data in the database related to the targeted individual, the first portion including an identifier", and 'wherein the identifier is not a component of the address of the resource",

it is interpreted that the first media here means an email is sent to the consumer with the Url of the site and an identifier for the user to use to log-in to a special resource, consistent to the Specifications Figure 8.

FEDOROVSKY does not specifically disclose such email, however Official Notice is taken that it is well-known for businesses to send targeted emails to consumers with invitations to visit certain websites and further providing identifiers for special incentives or viewing. It would have been obvious to one skilled in the art at the time the invention was made to add such invitational emails to FEDOROVSKY to provide special treatments to preferred customers or to entice potential customers to try the service.

As to claims 13-14, which parallel claims 2-3, they are rejected on the same basis.

As to claims 7-9, 11, 17-19, 24-26, 27-30, 36-38,

FEDOROVSKY does not specifically disclose but Official Notice is taken that Internet advertising including a visual component is well-known to enhance the user's experience with the advertised object; thus it would have been obvious to one skilled in the art at the time the invention was made to add delivering a media including a visual component to the system of FEDOROVSKY above for the above advantage. It is further obvious that the same principle of presenting a generic marketing portion in addition to a tailored portion could be applied to the visual component as well for the same purpose as stated above, that of providing a warmer, more personalized message. Thus it would have been obvious to add such visual messages made of the 2 portions, generic and tailored portion, to the system of FEDOROVSKY above for the above discussed advantage.

(Other additional limitations of the dependent claims 8-9, 11, 18-19, 25-26, 29-30, 37-38, common to those of claims 2-3, or 13-14 are rejected on the same basis and for the same motivations).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Captain Zoom, "Ordering Information and Policies", http://www.captainzoom.com/policy.html discloses customized birthday songs recordings where implicitly names of the birthday persons are inserted to a generic birthday song to form the customized birthday songs. Names, spellings of names and spelling variations are used to form the customized songs. Captain Zoom discloses that for special spelling variation, which also implies special pronunciation, a new version of the song needs to be recorded for an additional fee (see page 2).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The

Examiner works a part-time schedule and can normally be reached on Tuesday-Wednesday 9:00-6:00.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone numbers for the organization where this application or proceeding is assigned are **571-273-8300** for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 19, 2005
KHL

JAMES W. MYHRE
PRIMARY EXAMINER